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EDITORIAL.

ANNOUNCEMENT.

The report of *Committee F* of the Institute on *Indeterminate Sentence and Release on Parole* which should appear in the present number, has been delayed. It may be expected in the March issue. —[Eds.]

THE CONGRESS FOR CRIMINAL ANTHROPOLOGY.

The most important event of recent occurrence in the field of criminology was the meeting of the Seventh International Congress for Criminal Anthropology at Cologne, October 9th to 13th inclusive.

The session was timely, if for no other reason than that several European states are at this time revising their penal codes. Interest in every scientific problem, therefore, that bears either immediately or remotely upon our understanding of the criminal and consequently upon the proper treatment of the anti-social classes is on a high level of intensity. In his discussion of the preliminary draft of the penal codes of Germany, Austria, and Switzerland, M. Enrico Ferri called especial attention to the latitude that is allowed to the judge in the trial of one who is accused of crime. The judges in these foreign states already enjoy liberties in investigating and expressing themselves with respect to the accused which are altogether unknown in American courts. Not only must the judge be a jurist, says Professor Ferri, but he ought to be, above all, a psychologist and sociologist as well.

A free discussion on the first day of certain anthropological data and of inheritance as a factor in the causation of crime, by Professors Klaatch of Breslau and Rosenfeld of Münster, was followed by reports and debates on the merits of probation and the indeterminate sentence. These discussions supplied by far the most distinctive features of the congress. Mme. Lombroso-Ferrero presented a report upon the utility of the probation system among children and its danger in the case of adults. In this connection M. Holtgreven called attention to the increase in the number of crimes in Germany which is in advance of the increase in population. This he attributed particularly to the defects in education. It is necessary to dam up the tide of juvenile criminality by having recourse to the conditional sentence, by protective education, and by other means. At this point Professor Ferri declared that the means by which

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we to-day attempt to reclaim the juvenile delinquent will be employed by our posterity in the treatment of adult criminals. In the course of the discussion it was recommended again and again that the child, preferably before he enters school, should be submitted to a mental examination, the results of which should be carefully inscribed in a special register. It seems to us that at such an early age a careful examination of the individual's physical development might be of greater significance, from the point of view of probable degeneracy at any rate, than an examination of the mental status. The idea in the minds of those who suggested it seems to have been that with such data at hand teachers would be more able than otherwise to adjust the means at their disposal to the end of developing desirable forms of conduct.

The indeterminate sentence received a large share of attention. M. Gleispach, professor of penal law in the University of Prague, was its great protagonist on the third day of the conference. Professor Thyren said that he considered the indeterminate sentence impracticable in dealing with the normal criminal. The question may be different, however, as regards the criminal who is on the border line of irresponsibility, for in his case whatever measure of control may be taken cannot be regarded as punishment. At this point emphasis was properly brought to bear by M. Friedman of Budapest upon the idea that the principle of the indeterminate sentence has nothing in common with the idea of expiation. The principle rests simply upon the protection of the group. No doubt the popular mind to-day holds strongly to the idea of expiation and it would, therefore, be a considerable risk to introduce, wholesale, into actual practice our scientific knowledge pertaining to this subject without first transforming public sentiment, or at any rate without transforming it slowly as one progresses with the application. Friedman thinks that for the present we must hold to the rule—determinate punishment and indeterminate measures for the ultimate liberty of the culprit. Furthermore, in the course of this discussion, M. Aschaffenburg contended that in no case should the administration of the indeterminate sentence permit one who has not overcome his anti-social instincts to leave his place of imprisonment behind him. In some cases it is possible that a prisoner should never be released. M. Engelen, M. Van Hamel, and M. Von Hessert continued the discussion, in the course of which Professor Engelen, alluding to Aschaffenburg's contention, said that the experience of the Americans should bring about the rejection of the proposed reform, for in numerous cases he says, with ample justification, a prisoner is released who is not adapted to normal life and who is, therefore, incorrigible. To this criticism, the obvious counter reply was apparently wanting at the moment, viz.: that this indicates only the need for more complete

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administrative care. In this connection M. Von Hamel recommended a conservative position: the adoption of the principle of conditional liberation as a preparation for the possible future establishment of the indeterminate sentence. By means of conditional liberation we may be able to determine in a particular case whether the amendment of the delinquent has been attained, provided, of course, that the individual so liberated be not thrown upon the street, but placed in an environment of such a simple character that he may be able to adapt himself to it. In all of this Attorney-General Von Hessert of Darmstadt concurred.

At its conclusion the congress by vote adopted the following theses:

First: "Hardened and professional criminals, recidivists, who present a grave danger to society, must be deprived of their liberty for as long a time as they are dangerous to the mass. Their liberty should be as a general rule conditional."

Second: "In the case of criminals whose crimes issue from a lack of social adaptability, strictly determined punishment should be replaced by an indeterminate penalty which should be executed according to the progressive system. The liberty of the criminal should be protected (a) by the establishment of the maximum penalty; (b) by the composition of the commission of liberation, the majority of which should be composed of independent judges."

Finally, acting on the proposition of M. Aschaffenburg, the congress decided to address to the commission charged with the revision of the penal code the view that "in the next German penal code conditional liberation should be treated not by the judicial administration but by a special commission, of which a physician who has studied psychiatry, and at least one judge should form a part, and that this commission should at the same time make tests to the end of determining the possibility of introducing the indeterminate sentence."

One is impressed with the paucity of discussion of strictly anthropological problems in this congress. The report of Professor Klaatsch upon the results of his investigations of primitive Australian races, and that of Rosenfeld on the connection of race and criminality, aroused relatively little discussion. This is, perhaps, to be expected, inasmuch as these are relatively highly specialized fields of research.

ROBERT H. GAULT.

THE LIMITS OF COUNSEL'S LEGITIMATE DEFENSE.

Out of the many issues and sensations concentrated in the McNamara dynamite murder case there arises one emphatic question which dominates all others for the thoughtful student of our criminal